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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,052	07/24/2001	Valentin Hierzer	CCK-0057	3731

7590 06/03/2005

KNOBLE & YOSHIDA, LLC
Eight Penn Center, Suite 1350
1628 John F. Kennedy Blvd.
Philadelphia, PA 19103

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT PAPER NUMBER

3727

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary

Application No.

09/911,052

Applicant(s)

HIERZER ET AL.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1-26-04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Claim Rejections - 35 USC § 102***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1,3-8,10-13, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Mogard (US 5,799,840).

The tamper evident band **280** at arm **290** is ultrasonically sealed to the flange **25** of the closure body. The gripping projection is represented by reference character **300** (column 6, lines 9-10). Thus, arm **290** remains with the closure body upon opening of the closure.

Alternatively, both arms **285** and **290** will remain with the cap and body, respectively, when the frangible bridges **295** are relocated between the two arms (column 6, lines 23-25)

3. Claims 1,4,10,13 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kitterman (US 4,941,592).

It is noted that the disclosure of the instant invention at page 4 of the specification and in figure 1 sets forth the at least one tamper evident band **36** as what is typically referred to as a frangible bridge. To that end, the following rejection is set forth.

The embodiment illustrated in figures 8-11 discloses the tamper evident band **152** is unitary with the lid portion **114** and integral with the body **112** via the engagement between locking step **160** and tamper evident member **150**. Upon opening of the closure, the tamper evident band **152** remains with one of the cap and the body.

4. Claims 1,3-10,13 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Neveras et al (US 5,386,918).

It is noted that the disclosure of the instant invention at page 4 of the specification and in figure 1 sets forth the at least one tamper evident band **36** as what is typically referred to as a frangible bridge. To that end, the following rejection is set forth.

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The embodiment illustrated in figures 8-11 discloses the tamper evident band 35 is unitary with the lid portion 3 and integral with the body 5 upon engagement of body nibs 37 with the recesses 27 of the tamper evident member 19. Upon opening of the closure, the at least one tamper evident band 35 remains with one of the cap and the body.

5. Claims 1,3,4, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Lay (WO 98,57864).

Tamper evident band 54 is unitary with the lid at 60 and integral with the cap body via connecting engagement between tabs 62, 64 and apertures 66, 68. The upstanding central portion 32 is a drinking spout.

6. Claims 1-4 and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Decelles (WO 00/76875).

Tamper evident band 43 is unitary with the lid at frangible bridge 45 and integral with the cap body via connecting engagement between ring 37 and edge 49 of tamper evident band 43. In the initial broken state at 45, the tamper evident band 43 remains attached to the cap body via ring 37. The upstanding central portion, surrounding opening 27 (unnumbered in the drawing figures) is a drinking spout.

With respect to claim 2, ring 37 is a further tamper-evident band arranged to become separated from the body upon removal of the cap from the associated container.

With respect to claims 11 and 12, Decelles teaches the tamper evident band is ultrasonically attached to the body at a bottom edge 49 of the tamper evident band (page 6, lines 1-2).

Response to Arguments

7. Applicant's arguments, see the paragraph entitled "The Rejection Under 35 USC 103(e) on page 6, filed March 16, 2005, with respect to claims 1-10 and 21 have been fully considered

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and are persuasive. The rejection of claims 1-10 and 21 in view of Smith et al. has been withdrawn.

8. Applicant's arguments filed March 16, 2005 have been fully considered but they are not persuasive, except for the rejection of claims 1-10 and 21 in view of Smith et al as noted above.

As set forth above, the multi-part tamper-evident band **280** of Mogard remains attached to one of the cap **35** or the body **25** upon opening of the closure. Alternatively, the disclosure at column 6, lines 23-25 indicates portions of the tamper-evident band remains with respective portions of the cap and closure.

Regarding applicant's arguments directed to Kitterman and Neveras, the structure of the disclosure and the structure presented in the arguments in favor of patentability are inconsistent. While the disclosure sets forth the at least one tamper evident band as what is conventionally regarded in the closure art as a frangible bridge, the arguments inconsistently are directed to the portion of the closure of the instant applicant conventionally known to be the tamper-evident band. Thus, the rejections are based upon the broadest reasonable interpretation of the prior art.

Conclusion

9. In view of the new grounds of rejection based upon Lay and Decelles, this Office action is made non-final.

10. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

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11. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-9306 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (571) 272-4549.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH
May 28, 2005



Robin A. Hylton
Primary Examiner
GAU 3727